

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000001-001 DT

04/09/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

EAN P WHITE

v.

TRACEY MARIE CHAMBERLIN (001)

BRIAN F RUSSO

PHX MUNICIPAL CT

REMAND DESK-LCA-CCC

APPEAL DISMISSED / REMANDED

Lower Court Case Number 14004789/4405997.

Defendant-Appellant Tracey Chamberlin (Defendant) pled guilty in Phoenix Municipal Court to driving under the extreme influence and was sentenced October 3, 2011. Defendant has filed a Notice of Appeal from the trial court's May 31, 2012, order denying Defendant's Motion for Modification of Sentence, and the State has filed a Motion To Dismiss Defendant's Appeal. For the following reasons, this Court grants the State's Motion To Dismiss Defendant's Appeal.

I. FACTUAL BACKGROUND.

On October 3, 2011, Defendant pled guilty to driving under the extreme influence, and on that same day, the trial court imposed sentence. On May 10, 2012, Defendant filed a Motion for Modification of Sentence, which the trial court denied on May 31, 2012. On June 13, 2012, Defendant filed a Notice of Appeal. On December 10, 2012, the State filed a Motion To Dismiss Defendant's Appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID THE TRIAL COURT ERR IN DENYING DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE.

The State has asked this Court to dismiss Defendant's appeal. For two reasons, this Court concludes it does not have jurisdiction to consider Defendant's appeal.

First, Defendant's Motion for Modification of Sentence was untimely, so the trial court did not have jurisdiction to consider it. The criminal rule provides in part as follows:

Rule 24.3. Modification of sentence. The court may correct any unlawful sentence or one imposed in an unlawful manner within 60 days of the entry of judgment and sentence but before the defendant's appeal, if any, is perfected. . . .

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Rule 24.3, ARIZ. R. CRIM. P. The time limits for post-trial motions are jurisdictional. *State v. Bryant*, 219 Ariz. 514, 200 P.3d 1011, ¶¶ 8–14 (Ct. App. 2008) (28 days after trial court terminated defendant’s probation and ordered his DNA profile expunged from Arizona’s DNA identification system, state filed motion under Rule 24.3 for trial court to reconsider its order; 115 days after expungement order, trial court granted state’s motion; because trial court did not rule on state’s motion within 60 days from date of expungement order, trial court no longer had jurisdiction to modify sentence; court therefore vacated trial court’s order); *State v. Nordstrom*, 230 Ariz. 110, 280 P.3d 1244, ¶¶ 23–26 (2012) (judgments and sentences were entered May 1998; court affirmed convictions but remanded for resentencing; after jurors imposed death sentence in September 2009, defendant filed motion to vacate judgments under Rule 24.2; court held validity of convictions was not before court in 2009, thus motion to vacate judgments was untimely; court noted comment to rule states, “Rule 24.2 sets the time limit of 60 days for such motions; after that the defendant may only petition for relief under Rule 32.”); *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139, ¶ 33 (2001) (because defendant’s motion for new trial under Rule 24.1 was untimely, trial court had no jurisdiction to consider those claims, and court would not address them on appeal; defendant could raise those claims in petition for post-conviction relief).

In the present case, the trial court sentenced Defendant on October 3, 2011, thus the trial court had jurisdiction under Rule 24.3 only until December 2, 2011, to modify the sentence. When Defendant filed her Motion for Modification of Sentence on May 10, 2012, the trial court no longer had jurisdiction to grant relief under Rule 24.3. The trial court therefore correctly denied Defendant’s Motion for Modification of Sentence.

Second, Defendant pled guilty to her offense. Because Defendant entered a guilty plea, Defendant no longer had the right to appeal. A.R.S. § 13–4033(B); Rule 17.1(e), ARIZ. R. CRIM. P. Because Defendant did not have the right to appeal in this matter, this Court must dismiss Defendant’s appeal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not have jurisdiction to consider Defendant’s Motion for Modification of Sentence, and further concludes Defendant did not have the right to appeal from the trial court’s order.

IT IS THEREFORE ORDERED granting the State’s Motion To Dismiss Defendant’s Appeal.

IT IS FURTHER ORDERED dismissing the appeal in this matter.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT